UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 15 Civ. 08725 (GBD)

UMB BANK, N.A., as Trustee, )
Plaintiff, )
v. )
SANOFI, )
Defendant. )

DEPOSITION OF DR. ELIAS ZERHOUNI

Baltimore, Maryland

November 7, 2018

Reported by: M. Payonk

Job No. 150664

to the CEO of Sanofi for R&D issues that he wanted me to advise him on in March or April of 2009.

Q. And then when did you formally join Sanofi?

A. I formally joined Sanofi as an employee of Sanofi on January 1, 2011.

Q. And in what position did you join --

A. I was the --

Q. -- Sanofi?

A. -- president of global R&D.

Q. And could you briefly describe what your job responsibilities were at that time?

A. Essentially, to be the corporate officer for research and development for the company.

Under research and development, medical affairs also reported to research and development as well as regulatory affairs.

Q. And at the time you joined, did you become a member of what was known as the COMEX?

A. Yes. The COMEX is the French acronym for executive committee.

Q. Correct. And that's a committee

A. Then in -- in September-October, there is a reconciliation of all of these budgeted proposals that come then to the CEO. And at the end of the year in December the final budget is approved by the CEO and the board.

So I -- I'm sorry to go through these details because if you are external to that you will tend to think that the June proposal is the real budget. The June proposal is a wished-for budget which is then -- then arbitrated according to the requirements of the company, which is also in line with your long-range plan, which is modified that year for an extra year.

So when you looked at the long-range strategic plan for R&D as you mentioned, the goal was to keep the total envelope flat or slightly declining, not just R&D. R&D, medical affairs, regulatory, all of it.

And then when you came to the -- the plan for that year, you make proposals and you prioritize and you say it's really important for me to do more of this, less of that, I want

to cut this, I want to augment that.

And then the totality of that is then reconciled by the CFO for the -- for the CEO as to exactly what will be presented to the board and finally acted upon by the board, which is then the -- the official budget for the coming year.

Sorry to go into a very long presentation to you but I noted that, indeed, it's arcane sometimes for outsiders, and it's important to understand how it's done.

Q. I -- I think understand the Sanofi budgeting process pretty well.

A. You probably do.

Q. So, for example, the process that you described includes something called a preread; correct?

A. Preread is a mechanism by which we inform all members of a team with predocument -- preread document so that they can be ready for the conversation at the meeting.

Q. And in prereading, there's often specific instructions given that are

A. I mean, to me, Chris told me the most important thing was to maintain the viability of Genzyme and its programs and do every effort to make sure that that -- that that acquisition turned into a success, not a failure. And Lemtrada was part of it so we had always --

Q. Okay, okay.

A. -- considered that.

Q. Thank you for your answer.

Were you given any specific instructions as to what the obligation of Genzyme was with respect to using diligent efforts to meet certain milestones as they related to Lemtrada?

A. Legally? No. Specifically? No. The only thing I was told was to make every reasonable effort to make sure that the -- the programs that were transferred were successful and that the Genzyme enterprise was successful in terms of its integration. So do not disturb anything that could be jeopardized, including Lemtrada in particular.

Q. Okay. But no instructions were given about how to treat allocation of resources to

Lemtrada specifically?

A. Basically, what -- what I knew was to make absolutely clear that this was a priority that will have to be looked at in the context of a global R&D to the same extent of diligence and effort that we would do for any molecule.

Q. Okay. But nothing specific to Lemtrada?

A. Only in the conversation with Chris Viehbacher, and he sent me emails and -- that he basically said I'm really, really, really focused on making sure that the Genzyme acquisition is done smoothly, that we don't smother that company, it's a biotech company, and Lemtrada was cited as part of the priorities for --

Q. Okay.

A. -- that.

Q. Okay.

A. So we had a set of priorities for making sure that Genzyme -- the Genzyme acquisition would be successful and in particular, amongst many other instructions, Lemtrada was part of it.

A. Yeah.

Q. -- you indicate to him ultimately, if you really believe in this, you can appeal and Chris Viehbacher can arbitrate; right?

A. Yeah, that is correct.

Q. And you go on to say that meantime, we follow the rules he and Jerome outlined.

Do you see that?

A. No, I don't. Show me again. What line?

Q. Same thing. It's in the second paragraph of your email of October 2012.

See that?

A. After all the budget's done and you want to appeal. By Chris, I certainly will understand. In the meantime, we follow the rules he and Jerome outlined, yes.

Q. So basically, Jerome Contamine, CFO, and Chris Viehbacher, CEO, had set some pretty clear rules about what should happen with the budget. And the deal at the time was follow the rules. If you don't agree with it, ultimately you can take it up personally with Chris Viehbacher in a form known as an

arbitration; correct?

A. That's correct. In other words, what I'm saying is, you know, look, I'm -- my hands are tied. I don't have an infinite amount of monies to give you. They are defined by Jerome and Chris, and each -- within each perimeter you have to be following those rules which again relate to the LRP, the budget request, the guidance, and -- and so forth.

Q. If you go to the fifth paragraph of your email back of October 2012 --

A. Uh-huh.

Q. -- it says "In terms of medical management." You see where I am?

A. Yeah.

Q. And it says: "Given the delay in filing Lemtrada, I think you could easily reduce that portion significantly and request that you do so out of this RD budget."

Do you see that?

A. Yeah.

Q. What are you referring to here?

A. Okay, so timing, right? So start at beginning. In terms of medical management,

Q. So sorry. I'll withdraw the question. Previously, you said one way you might get a negative signal is that the patients don't accumulate enough disability at your point of measurement.

A. That is correct.

Q. Here what you're saying is even if they actually did develop disability because the Rebif arm did better than we thought, on a hazard ratio basis you might get a lack of statistical significance; correct?

A. That is correct. So just to make it very straight so that everybody understands, all right, when you do a trial -- do you mind?

Q. No, please.

A. Okay. So when you do a trial, you're comparing the slope of separation. So theory number 1 is that the slope is -- is not large; and therefore, it takes time to see the results. Where the other is that the comparative arm, instead of being here, it's here. And the slope is good, but you have a difference between the starting points of the two.

E. Zerhouni

THE WITNESS: November '17 no.

MR. WEISS: But then I'm going to go backwards.

THE WITNESS: Okay.

BY MR. WEISS:

Q. So I show you what's been marked for identification as Plaintiff's Exhibit 659.

Do you recognize it?

A. Uh-huh.

Q. And what is it?

A. These are minutes of an IDC, in particular, the development council, which is the decision-making body for --

Q. And --

A. -- for pushing forward programs.

Q. And this is fairly recent; correct?

A. November '17 is about eight months, 10 months.

Q. When did you leave Sanofi?

A. July 1, 2018.

[redacted]